92-1678

Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA,

PETITIONER,

V.

TRACY MONIQUE CALDWELL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITION OF THE STATE OF ALABAMA

OF

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ATTORNEY GENERAL

AND

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46 pp

QUESTIONS PRESENTED

1. Where an arrestee is subjected to no force, threats, rewards, offers of rewards, or any other form of coercion, and is accorded the procedure mandated by Miranda v. Arizona, (384 U.S. 436 [1966]), including being advised of his or her constitutional rights, acknowledging understanding of them, and waiving the rights, is a statement by the arrestee admissible, not withstanding the fact that a sophisticated battery of tests given to the arrestee over a year later indicates that the arrestee did not understand the concepts of the Miranda Rule at the time of the arrest?

2. Is a statement obtained from an arrestee under the conditions outlined above, rendered involuntary solely by the fact that he or she lacks the mental ability to comprehend the concepts of the Miranda Rule, where the arrestee indicates understanding of the warning?

THE PARTIES

In The Circuit Court of Tuscaloosa County, Alabama, the Court of Criminal Appeals of Alabama, and the Supreme Court of Alabama, the parties were Tracy Monique Caldwell, who is Respondent herein, as Defendant, Appellee, and Respondent, respectively, and the State of Alabama, who is Petitioner herein, as Plaintiff, Appellant, and Petitioner, respectively.

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PETITION OF THE STATE OF ALABAMA

The State of Alabama, Your Petitioner, respectfully prays that a writ of certiorari issue to review the opinions and orders of the Supreme Court and Court of Criminal Appeals of Alabama in the above cause.

OPINIONS AND ORDERS BELOW

The Order of the Circuit Court of Tuscaloosa County, Alabama, granting the Respondent's motion to suppress the Respondent's four statements is

not reported and is submitted as Appendix "A" to this petition.

The opinion and order of the Court of Criminal Appeals of Alabama affirming the Circuit Court's order is reported as follows:

State v. Caldwell, 611 So.2d 1149 (Ala. Cr. App, 1992)

A copy of this opinion is submitted in Appendix "B" hereto.

The order of the Court of Criminal Appeals of Alabama denying rehearing is reported with the above opinion. A copy of the same is submitted in Appendix "B" hereto.

The order of the Supreme Court of Alabama denying the writ of certiorari sought by the State of Alabama to review the above opinion and order is reported with the above opinion.

A copy of the same is submitted as Appendix "C" hereto.

JURISDICTION

The order of the Supreme Court of Alabama denying review was issued on February 5, 1993, and this petition is filed within ninety (90) days of said date. This Honorable Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Alabama Courts believed that their decisions were mandated by the prohibition against self incrimination of the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States. Your Petitioner is making a claim under the same said provisions. Said constitutional provisions read:

"AMENDMENT V

"No person shall... be compelled in any criminal case to be a witness against himself..."

"AMENDMENT XIV

"Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

The Respondent is indicted under Sections 13A-6-2 and 43, 13A-7-5, and 13A-8-41, Code of Alabama, 1975, a copy of the same is submitted in Appendix "D" hereto. The validity of these statutes is not at issue here.

STATEMENT OF THE CASE

The Respondent, Tracy Monique Caldwell, who will hereinafter be referred to as "Caldwell", was indicted by the Grand Jury of Tuscaloosa County, Alabama, for murder,[1] burglary in

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[1]Section 13A-6-2, Code of Alabama, 1975, appendix "D"

the first degree,[2] robbery in the first degree[3] and kidnapping in the first degree.[4] (R.pp.2-5)

On February 8, 1990, Caldwell's motion for a forensic evaluation of her competence to stand trial and mental condition at the time of the offense was granted. On June 7, 1990, she was found competent to stand trial. (R.pp.41-46 and 55-62)

On June 21, 1990, Caldwell waived arraignment on the indictment and pleaded not guilty. (R.p.63) The waiver sets out the following recitations by Caldwell's Attorney:

> "...Comes the attorney for the above-styled defendant and certifies that on this date the above and foregoing rights were read by the defendant in my presence, or were read

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[2]Section 13A-7-5, Code of Alabama, 1975, appendix "D"

[3]Section 13A-8-41, Code of Alabama, 1975, appendix "D"

[4]Section 13A-6-43, Code of Alabama, 1975, appendix "D"

to him [sic] by me, that I discussed such rights with the defendant, in detail, that a written copy of the above rights was given to the defendant for him [sic] to keep,use and study, and that I concur in the plea of not guilty ..." (Ibid.)

On February 28, 1991, Caldwell moved to suppress certain statements she had made, on the following grounds:

"1. On or about November 10, 1989 the Defendant was taken into custody in Tuscaloosa County, Alabama. Subsequently the Defendant gave two statements; one on 11/10/89 and a second statement on 11/15/89 to Tuscaloosa Homicide Officers.

"2. At the time these statements were given, the Defendant was approximately 18 years of age and had an IQ of 70 with a reasoning capacity of a ten (10) year old.

"3. The Defendant, Tracy M. Caldwell had been involved in Special Education throughout her school career. She had been labeled 'educable mentally retarded.'

"4. The Defendant has been recently tested by Dr. Ann Bishop to determine Defendant's ability to understand her Miranda Rights. A copy of the testing protocol and results are attached hereto as 'Exhibit A'.

"5. The Defendant, Tracy M. Caldwell did not understand or perceive her Miranda Rights as read to her by Tuscaloosa County Police Officers and

therefore could not have given the statements knowingly and voluntarily.

"WHEREFORE, the Defendant would request that the Court suppress any and all statements given by the Defendant regarding this case." (R.pp. 83-84)

On April 25 and August 29, 1991, the cause came on for hearing before Honorable Thomas S. Wilson, a Circuit Judge. Caldwell was attended by her attorneys. (Tr. pp. 4ff and 140ff) At this hearing, it was proven without conflict that in obtaining four separate custodial statements from Caldwell, Tuscaloosa City and County law enforcement officers had followed the standard Miranda procedure. It was undisputed the statements were in no way coerced. There was, however, sharply conflicting expert testimony on whether the Appellee was capable of understanding Miranda. An expert employed by the defense testified that Caldwell could not understand the concepts of the Miranda Rule. The State presented an expert who testified that Caldwell had a practical understanding of the warning as it related to her. (Transcript)

On January 14, 1992, the Trial Judge granted the motion to suppress on the grounds that, since the Appellee could not understand a Miranda warning, the statements were not made with a voluntary waiver. (R.p.132) The Trial Court's order reads as follows:

"ORDER

> "This cause was heard on defendant's motion to suppress the statement given by the defendant on the grounds that the defendant did not fully and voluntarily waive her rights, because she did not understand her rights and the 'Miranda warnings.'
>
> "After a review of all the evidence it is the opinion of this court that the defendant did not understand her 'Miranda rights' and did not freely and voluntarily waive said rights. Therefore, [on] the motion to suppress [,] the statements taken to date are ordered suppressed...." (R.p.132; appendix "A")

Appeal followed. (R.pp. 138-139)

On September 30, 1992, the Court of Criminal Appeals of Alabama affirmed the Circuit Court's order. The Court issued an opinion, in which it recognized that the police had engaged in no misconduct and had followed model Miranda procedure. However, the Court of Appeals

concluded (1) that the Trial Judge was justified in finding that Caldwell could not and, therefore, did not understand the Miranda warnings[5] and (2) that because the Appellee did not understand the Miranda warnings, contrary to her assertions to the police, her statements were involuntary. State v. Caldwell 611 So.2d 1149 (Ala. Cr. App, 1992); appendix "B")

On October 7, 1992, the Petitioner State applied for rehearing and moved for the finding of additional facts.

On November 13, 1992, the Court of Appeals overruled the Petitioner State's application without opinion. (Ibid, page 13)

The Petitioner State sought review of the Court of Criminal Appeals' decision and opinion by petition for a writ of certiorari in the Supreme Court of Alabama raising the points and

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[5] In light of the ore tenus rule, the Petitioner State has, of course, never questioned this proposition.

questions herein presented. However, on February 5, 1993, the Alabama Supreme Court denied review, with two Justices dissenting (Appendix "C")

Unless this Honorable Court reverses the decisions below or new and unanticipated evidence comes to light, the further prosecution of Caldwell's charges is barred. See Rule 15.7(h) A.R.A.P, appendix "E".

STATEMENT OF THE FACTS

Mindful of the heavy burdens of this Honorable Court and not wishing to add thereto, we here present a brief summary statement of the facts. A more detailed statement can be found in the opinion of the Court of Criminal Appeals of Alabama. State v. Caldwell 611 So.2d 1149 (Ala. Cr. App, 1992); cert. den; appendix "B". A full detailed statement with full record references is set out in appendix "F" to this petition.

On Friday, November 10, 1989, investigators of the Tuscaloosa Homicide Metro Unit were investigating the disappearance of Ms. Corinne Harless, an elderly citizen and her automobile.

Ms. Harless' automobile was located at a hamburger restaurant at about 2:15 p.m. Ms. Harless' vehicle was being operated by a man and Respondent Caldwell. Caldwell was arrested and during the course of the day made three separate statements to the police. In the case of each statement, Caldwell was given a standard Miranda warning, indicated that she understood her rights and wished to waive them and then made the statement. At no point was Caldwell ever subjected to any force, threats, given any reward or hope of reward. After her third statement on November 10, 1989, Caldwell was released.

On November 15, 1989, Caldwell was arrested pursuant to a warrant. She was again advised of her rights by a standard Miranda warning, stated that she understood her rights and that she wanted to make a statement. She waived her rights in writing, as she had incident to two of the three November 10, 1989, statements. She then made a fourth statement. Again she was subjected to no force or threats and neither given nor promised any reward.

No suggestion has ever been made of impropriety in Caldwell's arrests or the compliance with standard Miranda procedure by the Police. No claim has ever been advanced that Caldwell was subjected to any coercion by the Police, and the evidence affirmatively shows that none occurred.

The above facts have been established and undisputed throughout this litigation.

The issues in this case arose against the background of the above facts but relate to events which occurred a year and two months after Caldwell's statements.

On February 1, 1991, an expert employed by the Defense administered a Grisso test to Caldwell, and, based on this test, concluded that Caldwell could not comprehend the concepts of the Miranda warning.

The Prosecution presented an expert who testified that in his opinion Caldwell had as good a practical understanding of the Miranda warning as the average person.

The Trial Judge credited the Defense expert's testimony and concluded that Caldwell could not understand a Miranda warning and, therefore, did not understand the warnings she received on November 10 and 15 of 1989. Based on this finding, His Honor found that Caldwell's statements were not made with a voluntary waiver. See Appendix "A".

The Court of Criminal Appeals of Alabama found that the Trial Judge's finding was supported by the evidence and that, due to her not understanding the Miranda warning, her statements were involuntary as a matter of law. See Appendix "B".

SUMMARY OF THE ARGUMENT

1. In light of Rule 15.7(a) and (h) A.R.Cr.P, appendix "E", this cause is final but is no sense moot.

2. This case presents an unusual opportunity to address a commonly raised issue of law on which there is little appellate authority. That issue is presented with great

clarity, since the record shows model police compliance with the Fifth Amendment and the procedure mandated by Miranda v. Arizona, (384 U.S. 436, 16 L.Ed 2d 694, 86 S. Ct. 1602 [1966]), and the Respondent's statements were suppressed solely because of her mental condition.

3. In equating voluntariness with Miranda comprehension, the Alabama Courts ignored the important difference between the substance of the Fifth Amendment right against compulsory self incrimination and Miranda procedure. In so ruling, the Alabama Courts ruled contrary to the many opinions of this Honorable Court holding un-Mirandarized statements to be voluntary.

4. Contrary to the consistent teaching of this Honorable Court, the Alabama Courts in this case expanded the Miranda Rule to erect a new barrier to the admission of probative evidence. This is a barrier which the police will never be able to predictably surmount.

5. Although, this Court has never had an occasion to squarely address the issue presented by this case, the resolution of that issue by the

Alabama Courts in this case is inconsistent with the opinions of this Court on related issues, including involuntariness resulting from mental disease.

ARGUMENT

I

PRELIMINARY MATTERS: FINALITY AND MOOTNESS

This cause arose as a pretrial appeal by the State of Alabama under Rule 15.7 A.R.Cr.P. appendix "E". Rule 15.7(a) provides; in pertinent part:

> "...Such an appeal may be taken only if the district attorney certifies to the Court of Criminal Appeals that the appeal is not brought for the purpose of delay and that the order, if not reversed on appeal, will be fatal to the prosecution of the charge. (Emphasis supplied.)

The state appellate Courts affirmed the Trial Court's ruling. Therefore, Rule 15.7(h) applies. That provision reads:

> "...(h)EFFECT OF RULING IN PRE-TRIAL APPEAL. If the trial court's ruling is upheld following a pre-trial appeal taken pursuant to this rule, then that affirmance shall operated as a bar to

> any further prosecution of the defendant or defendants as to whom the appeal was taken for any crime involved in the charge or charges as to which the appeal was taken, unless the trial court shall find that the subsequent prosecution is primarily based upon significant new evidence not reasonably available to the state when the pre-trial appeal was taken."
> (Emphasis supplied.)

Therefore, barring a reversal by this Honorable Court this cause is finally disposed of.

It may be that by the time this petition can be filed, the trial court will have formally dismissed the indictment. Such order would only re-affirm what Rule 15.7(h), above, accomplished as a matter of law. However, such order would not moot these proceedings, since on a reversal by this Court, the order of dismissal would be voided.

There is no basis for a claim that these proceedings are not final or that they are moot.

II

INTRODUCTION

Miranda v. Arizona, (384 U.S. 436, 16 L. Ed 2d 694, 86 S. Ct. 1602 [1966]), requires that an arrestee be informed of his constitutional rights and give some indication that he or she understands the warning. However, it is not unusual for criminal defendants, who received adequate warnings and indicated understanding, to claim that they did not really understand the warning. When trial judges reject such claims, the appellate courts invariably affirm on the basis of the ore tenus rule. When trial judges uphold such claims, appellate review is rare. This case is unusual, if not unique, in that this is an appealed case in which the trial judge credited the defense evidence and discredited the conflicting state's evidence. We, of course, took no issue with the Trial Judge's credibility choice in the state appellate courts and do not now. However, because of this finding by the trial court, this case presents an important and commonly raised

issue of law on which there is little appellate authority.

The issue of law is clearly presented in this case against a background of model compliance by the police with both the Fifth Amendment and the Miranda Rule. There are no ambiguities or confusing factors. The police conduct presented by this record could be used as a case study in how to obtain a constitutionally proper confession. Yet, the Trial Judge ruled that the Respondent's statements had to be suppressed, solely because of her mental condition.

We submit, then, that this case provides a rare and convenient opportunity to address the issue of the constitutional significance of a mental defect which interferes with an arrestee's understand of a Miranda warning, where, incident to the Miranda procedure, the arrestee asserted understanding.

III

VOLUNTARINESS AND MIRANDA

REASON FOR GRANTING THE WRIT:

CONFLICT WITH THE CONTROLLING DECISIONS OF THIS HONORABLE COURT

It is indisputed that in obtaining the Respondent's statements the police engaged in no coercive activities. Indeed, no such claim has ever been made. It is also undisputed, "...that the police gave thorough [Miranda] warnings and explained the waiver of Miranda rights to the ...[Respondent]...[and that in] each situation and prior to each statement, the ...[Respondent] waived her rights...." (State v. Caldwell 611 So. 2d 1149, 1152 [Ala.Cr.App, 1992]; cert. den; appendix "B", page 10) It is further undisputed that each waiver included the Respondent's stating that she understood her rights. Yet, on finding that the Respondent really did not understand the concepts of Miranda, the State Courts found her four statements involuntary. Thus, if this case had gone to trial, Respondent Caldwell's statements

would not have been admissible to impeach her conflicting testimony. See Mincey v. Arizona 437 U.S. 385; 397-398, 57 L.Ed 290, 303, 98 S. Ct. 2408 (1978); compare Harris v. New York 401 U.S. 222, 28 L.Ed 2d 1, 91 S. Ct. 643 (1971);

This case presents the fundamental question: What sort of rule did this Honorable Court establish in Miranda v. Arizona, (384 U.S. 436, 16 L. Ed 2d 694, 86 S. Ct. 1602 [1966]), a rule of substance or procedure? The critics of Miranda invariably claim that this Court added to the Constitution in the Miranda decision, but Courts since the dawn of the English legal system have established procedures to protect substantive rights. Therefore, this criticism is groundless, unless Miranda is something other than procedure. But, in Miranda itself and in every case construing Miranda, this Court has described the Rule and treated it, as procedure.

The substance of the Miranda rule is the Fifth Amendment, which has been a part of the Constitution since December 15, 1791. Of course, the policy against forcing persons to give

evidence against themselves is in no sense an American innovation. The policy was already well established in England at the time of Magna Carta in 1215. Thus, what was established in Miranda in 1966 was not a new substantive right but a new procedure to protect an ancient privilege.

The right against compulsory self incrimination is the right of an individual to choose whether he will provide incriminating testimony or not. Of course, there are many reasons why a person might choose to make a statement. "...It is difficult to tell with certainty what motivates a suspect to speak...." Oregon v. Elstad, 470 U.S. 298, 313, 84 L.Ed.2d 222, 235, 105 S.Ct. 1285 (1985). However, with one exception, the motivation is irrelevant. That exception is police coercion. This Honorable Court has consistently rejected claims that confessions were rendered involuntary for Fifth Amendment purposes by anything other than police coercion. E.g. Oregon v. Elstad, above; Moran v. Burbine, 475 U.S. 412, 89 L.Ed.2d 410, 106 S.Ct. 1135 (1986); and Colorado v. Connelly,

479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 (1986).

In Miranda v. Arizona, this Court established a procedure, which if followed would guarantee that a statement would be voluntary. This guarantee is secured by the requirement that an arrestee make an uncoerced, affirmative waiver of his rights to silence and counsel, which is an integral part of the Miranda procedure. "An involuntary statement obtained in compliance with Miranda procedure", such as implicitly found by the State Courts in this case is a contradiction of terms. At the same time, the Miranda Rule provides a clear procedure for obtaining admissible confessions. This Court has long recognized that the cost of Miranda is that many confessions, which would be fully admissible under the Fifth Amendment, are rendered inadmissible by Miranda. E.g. Michigan v. Tucker, 417 U.S. 433, 443, 41 L.Ed.2d 182, 192, 94 S.Ct. 2357 (1974).

The vital distinction between the substantive right against compulsory self

incrimination of the Fifth Amendment and the procedure established by Miranda is clearly seen in the case of voluntary, admissible statements, in which Miranda compliance is not mandated. Obviously, if Miranda compliance were essential to voluntariness, there could never be a voluntary statement without Miranda compliance. Yet, this Court has consistently limited the Miranda mandate to custodial interrogations. Statements obtained under all other circumstances are tested by traditional, pre-Miranda voluntariness standards.

In Miranda itself the Court wrote: "...Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today..." (384 U.S. 436, 478, 16 L.Ed.2d 694, 726) Voluntary statements by persons who are not in custody are admissible without proof of a Miranda warning. Beckwith v. United States, 425 U.S. 341, 48 L.Ed.2d 1, 96 S.Ct. 1612 (1976). This is so even in the case of station house questioning. California v. Beheler, 463 U.S.

1121, 77 L.Ed.2d 1275, 103 S.Ct. 3617 (1983) Un-Mirandarized questioning is acceptable even if the person is under arrest, if he is not in custody. Berkemer v. McCarty, 468 U.S. 420, 436ff, 82 L.Ed.2d 317, 332ff, 103 S.Ct. 3138 (1984) Thus, if Caldwell had been questioned at the hamburger restaurant, before any action was taken that would have led a reasonable innocent person to believe that they were not going to be allowed to go shortly, the admissibility of her answers would have been unaffected by the lack of a Miranda warning. In New York v. Quarles (467 U.S. 649, 81 L.Ed.2d 550, 104 S.Ct. 2626 [1984]), this Court held that in emergency situations, a person under custodial arrest could be questioned without Miranda warnings, and a statement resulting therefrom is admissible, if it is voluntary. Finally, a voluntary custodial statement obtained without Miranda compliance is admissible to impeach the party (Harris v. New York, 401 U.S. 222, 28 L.Ed.2d 1, 91 S.Ct. 643 [1971]), but not an involuntary statement. Mincey v. Arizona, 437 U.S. 385, 397-398, 57

L.Ed.2d 290, 303, 98 S.Ct. 2408 (1978). As this Court stated in Oregon v. Elstad, above:

> "...The failure of police to administer Miranda warnings does not mean that the statements received have actually been coerced, but only that courts will presumed the privilege against compulsory self-incrimination has not been intelligently exercised...." (470 U.S. 298, 310, 84 L.Ed.2d 222, 233)

If a voluntary and admissible statement can be obtained without a Miranda warning, it follows that a voluntary statement can be obtained from a party who does not comprehend the concepts of Miranda.

In equating Fifth Amendment voluntariness with Miranda comprehension, the Alabama Courts elevated Miranda procedure to a substantive right and ruled contrary to the controlling authorities of this Honorable Court.

IV

THE STATE COURTS HAVE EXPANDED MIRANDA TO ERECT AN ADDITIONAL BARRIER TO THE ADMISSION OF VOLUNTARY STATEMENTS.

REASON FOR GRANTING THE WRIT:

CONFLICT WITH THE CONTROLLING DECISIONS OF THIS HONORABLE COURT

This Court has, "... cautioned against expanding ... exclusionary rules by erecting additional barriers to placing truthful and probative evidence before state juries...." (Colorado v Connelly, 479 U.S. 157, 166, 93 L.Ed.2d 473, 484, 107 S.Ct. 515 [1986]) In this case, the Alabama Courts threw that caution to the wind and erected just such a barrier.

The Fifth Amendment bars from evidence statements which are the product of police coercion, but in this case the police engaged in no coersive activity. The Miranda Rule requires that a procedure for the taking statements be followed, which includes informing an arrestee of his rights, obtaining an assertion of understanding and of waiver of rights, and that procedure was followed in this case. As regards,

the Miranda warning, this Court in Miranda wrote: "...Only through such a warning is there ascertainable assurance that the accused was aware of his right...." (384 U.S. 436, 472, 16 L.Ed.2d 694, 722) However, that "ascertainable assurance" is no longer recognized in Alabama.

The Alabama Courts have added a third requirement. It is not enough that a statement not be coerced. It is not enough that a statement be obtained in accordance with the procedure established in Miranda. Even if the arrestee is advised of his or her rights and expressly states that he understands them, this is not enough, if, in the depths of his or her mind, the arrestee really and truly does not understand the concepts of Miranda. In establishing this third requirement, the Alabama Courts ruled contrary to the decisions and opinions of this Honorable Court.

In Miranda v. Arizona this Court established a policy designed, "...to give concrete constitutional guide lines for law enforcement agencies and courts to follow..." (384 U.S. 436,

441-442, 16 L.Ed.2d 694, 705) As we pointed out in the preceding section, Miranda is a procedural rule. Like all procedural rules, its office is regularity and predictability. The "downside" of the Miranda rule is that many voluntary statements, which under the Fifth Amendment would be admissible, are rendered inadmissible. Michigan v. Tucker, 417 U.S. 433, 443, 41 L.Ed.2d 182, 192, 94 S.Ct. 2537 (1974) The "upside" of the Rule is that, if the Miranda procedures are followed, the resulting statements are certainly admissible. As Justice Thurgood Marshall observed in Berkemer v. McCarty (468 U.S. 420, 82 L.Ed.2d 317, 104 S.Ct. 3138 [1984]):

> ....One of the principal advantages of the doctrine that suspects must be given warnings before being interrogated while in custody is the clarity of that rule. ..." (468 U.S. 420, 430, 81 L.Ed.2d 317, 329)

See also Moran v. Burdine, 475 U.S. 412, 425, 89 L.Ed.2d 410, 423, 106 S.Ct. 1135 (1986). In Berkemer, Justice Marshall quoted Fare v. Michael C. (442 U.S. 707, 61 L.Ed.2d 197, 99 S.Ct. 2560 [1979]):

> "...Miranda's holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible. This gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in Miranda imposes on law enforcement agencies and the courts by requiring the suppression of trustworthy and highly probative evidence even though the confession might be voluntary under traditional Fifth Amendment analysis. See Michigan v. Tucker, 417 US 433, 443-446, 41 L.Ed.2d 182, 94 S.Ct. 2357 (1974) ...." (442 U.S. 707, 718, 61 L.Ed.2d 197, 208; emphasis supplied.)

But, under the policy established by the Alabama Courts in this case, that "...gain in specificity ...." is lost in the labyrinth of psychological testing theory.

In requiring that police officers not only inform arrestees of their rights but also make arrestees understand their rights, the Alabama Courts created a barrier which the police could never predictably surmount. At the outset, obviously few police departments are equipped to provide arrestees with the sort of testing services the Respondent received. If such

services were made available, would it be necessary to test each arrestee before questioning? Obviously, such testing would delay interrogation, in which innocent people might assert alibis, which could be verified, and guilty people might identify accomplices and provide information necessary to rescue victims. And, even if such services were provided, there is a high probability that a given arrestee, especially one with resources, could find an expert who would contradict the police department expert.

In Escabedo v. Illinois, (378 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758 [1964]), this Honorable Court held that an arrestee's request for counsel had to be respected. Justice White dissented, describing the Escobedo Rule as:

> ""...[A] rule wholly unworkable and impossible to administer unless police cars are equipped with public defenders and undercover agents and police informants have defense counsel at their side...." (378 U.S. 478, 496, 12 L.Ed.2d 977, 989)

But, equipping police departments with experts on the comprehension of Miranda would not solve the

problem created by the Alabama Courts, because the question of whether someone understands something is, in the final analysis, always a matter of opinion. Even if a person says he understands, there is now way of knowing if he really means it.

Although Caldwell is retarded, the problem is not limited to retarded persons. The situation in which any arrestee finds himself or herself is hardly appropriate to a civics lesson. Many arrestees, especially those anxious to "tell their story", probably pay little attention to the warning. The most the police can do is give the warning, answer any questions the arrestee has and assume that, if the arrestee says that he or she understands and wants to waive, they mean what they say.

What this Court wrote in Colorado v. Connelly, above, a case addressing the effect of mental disease on voluntariness for Fifth Amendment purposes, the continuation of the quotation with which we began this section, applies in this case:

> "...'[T]he central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, Delaware v. Van Arsdall, 475 U.S. 673, 681, 89 L.Ed.2d 674, 106 S.Ct. 1431 (1986), and while we have previously held that exclusion of evidence may be necessary to protect constitutional guarantees, both the necessity for the collateral inquiry and the exclusion of evidence deflect a criminal trial from its basic purpose. Respondent would now have us require sweeping inquiries into the state of mind of a criminal defendant who has confessed, inquiries quite divorced from any coercion brought to bear on the defendant by the State...." (479 U.S. 157, 166-167, 93 L.Ed.2d 473, 484; emphasis supplied)

In this case, the policy adopted by the Alabama Courts would have the courts go behind an arrestee's assertion of understanding of the Miranda warning and make "...sweeping inquiries into the stand of mind of ..." the arrestee at the time of that assertion, to see if he or she really and truly understood the warning. See State v. Caldwell 611 So. 2d 1149, 1151-1152; appendix "B", page 9.

Rules like Miranda are designed to provide with information on their rights and the opportunity to exercise them. At the same time,

these rules are designed to provide the authorities with standard procedures to follow, so that whatever comes out of those procedures has a quality of certainty. If the certainty of these results can be undermined by subsequent claims that what the citizen asserted during the procedures was false, then these rules are nothing except generators of sterile litigation.

Caldwell was given the procedure prescribed by Miranda. That procedure included a warning, an opportunity to ask for more information, an opportunity to express ignorance of the warning, an opportunity to decline to waive her rights and to refuse to speak. On hearing the warning, she expressed understanding. Given the opportunity to assert her rights, she chose to waive them. Given the opportunity to remain silent, she chose to tell her story, four times. If the Miranda procedure has any practical value, her statements were admissible and Alabama Courts erred to reversal in suppressing them.

V

MENTAL CONDITION AND MIRANDA

REASON FOR GRANTING THE WRIT:

THIS CASE PRESENTS AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW, WHICH THIS COURT HAS NOT BUT SHOULD ADDRESS.

The only reason for suppressing the Caldwell's statements is that she allegedly did not understand the Miranda warning. It is undisputed that she received such warnings and stated that she understood them and appeared to do so, but an expert hired by the Defense testified that, due to her mental condition, she could not understand the warnings.

This Honorable Court has consistently rejected the notion that physiological influences, which are unrelated to police coercion, render a confession inadmissible under the Fifth Amendment or Miranda. For example, in Oregon v. Elstad; (470 U.S. 298, 84 L.Ed 2d 222, 1055 S. Ct. 1285 [1985]), rejected a state court ruling that improper failure to comply with Miranda in obtaining statements undermined the

voluntariness of subsequent statements. The Court observed:

> "...This Court has never held that the psychological impact of voluntary disclosure of a guilty secret qualifies as state compulsion or compromises the voluntariness of a subsequent informed waiver...." (470 U.S. 298, 312, 84 L.Ed.2d 222, 234)

And:

> "...This Court has never embraced the theory that a defendant's ignorance of the full consequences of his decisions vitiates their voluntariness...." (470 U.S. 298, 316, 84 L.Ed.2d 222, 237)

In Colorado v. Connelly, (479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 [1986]), this Court refused to recognize as involuntariness for Fifth Amendment purposes, the compulsion to make a confession which resulted from a mental condition. Connelly is remarkably similar to this case. There, as here, the root concern was not police misconduct but the arrestee's mental condition. There, as here, a state court found that the arrestee's condition impacted the interrogation procedure. In Connelly, the state courts found that the arrestee's condition prevented him from choosing not to make a

statement. In this case, the state courts found that the Respondent's condition prevented her from understanding a Miranda warning. In Connelly, this Honorable Court rejected for Fifth Amendment purposes the concept of involuntariness arising from the arrestee's mental condition. The Court wrote:

> "...We hold the coercive police activity is a necessary predicate to the finding that a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. We also conclude that the taking of respondent's statements, and their admission into evidence, constitute no violation of that Clause..." (470 U.S. 157, 167, 93 L.Ed.2d 473, 484)

Of course, Connelly involved the Fifth Amendment, while the instant case involves Miranda, but the relationship between the two is such that Miranda must never be aggrandized over the Amendment. As this Court wrote in Michigan v. Tucker, (417 U.S. 433, 41 L.Ed.2d 182, 91 S.Ct. 2357 [1974])"

> "...The Court recognized [in Miranda] that these procedural safeguards were not themselves rights protected by the Constitution but were instead measures to insure that the

> right against compulsory self-incrimination was protected...." (417 U.S. 433, 444, 41 L.Ed.2d 182, 193)

It must, of course, it must be recognized that one of the purposes of the Miranda procedure is to inform the arrestee of his or her rights and that understanding of those rights is a necessary incident to being so informed, but the Miranda procedure makes provision for that. Part of that procedure is an indication by the arrestee of understanding the warning. In this case, Caldwell expressly stated that she understood the warning. Certainly the Miranda Rule does not encompass misleading the officers.

While this Honorable Court has never had the opportunity to address squarely the issue of the impact of mental defect on Miranda procedure, it seems clear that the resolution of this issue by the Alabama Courts is inconsistent with the opinions of this Court on related issues. For this reason, we submit the writ should issue in this case.

CONCLUSION

In conclusion your Petitioner, the State of Alabama, respectfully submits that in this case the Court of Criminal Appeals and the Supreme Court of Alabama, ruled contrary to the decisions of this Honorable Court and erroneously resolved an important question not previously addressed by this Honorable Court.

Therefore, Your Petitioner prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of and reverse the decisions of the said appellate courts of Alabama.

Respectfully submitted,

JAMES H. EVANS
ATTORNEY GENERAL
BY:

_____
JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR THE PETITIONER

0216jm

92-1678

Supreme Court, U.S.
FILED
APR 19 1993
OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA,

PETITIONER,

V.

TRACY MONIQUE CALDWELL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

APPENDIX TO THE PETITION OF THE STATE OF ALABAMA

OF

JAMES H. EVANS
ATTORNEY GENERAL

AND

JOSEPH G. L. MARSTON, III*
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

ADDRESS OF COUNSEL:

Office of the Attorney General
Criminal Appeals Division
Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(205) 242-7300

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APPENDIX A

ORDER OF THE CIRCUIT COURT

OF TUSCALOOSA COUNTY, ALABAMA

[RECORD, PAGE 132]

IN THE CIRCUIT COURT FOR

TUSCALOOSA COUNTY, ALABAMA

CASE NO. CC89-1305

STATE OF ALABAMA

VS

TRACY M. CALDWELL

DEFENDANT

ORDER

This cause was heard on defendant's motion to suppress the statement given by the defendant on the grounds that the defendant did not fully and voluntarily waive her rights, because she did not understand her rights and the "miranda warnings."

After a review of all the evidence, it is the opinion of this court that the defendant did not understand her miranda rights and did not freely and voluntarily waive said rights.

Therefore, [on] the motion to suppress[,] the statements taken to date are ordered suppressed.

ORDERED this 14th day of January, 1992.

/s/Thomas S. Wilson
CIRCUIT JUDGE

FILED

Record No. P____

FEB 6 1992

Doris T Turner, Clerk

APPENDIX B

OPINION OF THE COURT OF CRIMINAL APPEALS OF ALABAMA

Released

September 30 1992

Clerk

ALA COURT CRIMINAL APPEALS

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1991-92

CR-91-590

State of Alabama

v.

Tracy Monique Caldwell

Appeal from Tuscaloosa Circuit Court

(CC-89-1305)

MONTIEL, JUDGE

In July, 1989, the defendant, Tracy Monique Caldwell, was indicted for murder, in violation of §13A-6-2, Code of Alabama 1975; burglary in

the first degree, in violation of §13A-7-5; robbery in the first degree, in violation of §13A-8-41; and kidnapping in the first degree, in violation of §13A-6-43. After the Alabama Department of Mental Health found Caldwell competent to stand trial, she pleaded not guilty on June 21, 1990. On February 28, 1991, she moved to suppress certain statements she had made on November 10 and November 15, 1989. The trial judge held a hearing on the motion to suppress and during that hearing the judge heard expert testimony offered by the defendant and by the State. Their testimony differed sharply. Caldwell's expert testified that her I.Q. assessment administered in high school resulted in a score of 55. The most recent score, taken in 1991, was 71. Moreover, he expert described her as "educable mentally retarded." Further evidence at the hearing showed that she was given a "Grisso test," which is designed to determine a person's ability to comprehend a Miranda warning. Her expert actually interviewed her and concluded, based in part on the "Grisso test",

that the defendant could not comprehend a Miranda warning.

The State's expert witness, who did not interview Caldwell, criticized the "Grisso test" administered to her. The State's witness was also critical of the methodology used by Caldwell's expert. The State's expert reviewed the videotaped statements given by Caldwell and determined that she was competent to understand a Miranda warning and to waive her rights.

The State also offered the testimony of the law enforcement officials who interviewed Caldwell. These officials testified that her waiver was given voluntarily and without coercion from the police.

The evidence seemed to indicate that he police officers treated Caldwell as they would treat any other defendant. The officers indicated that they took care to explain "several words" to her. For example, the word "coerce" was specifically explained to her during the administration of the Miranda warnings. However, testimony for Caldwell indicated that "several

words" were not explained to her. Rather, her evidence indicated that only the word "coerce" was explained.

On January 14, 1992, after hearing all of the evidence, the trial judge granted the defendant's motion to suppress on the grounds that she could not have understood a Miranda warning. The State appeals this ruling.

The facts are undisputed that on November 19, 1989, Tuscaloosa, Alabama, law enforcement officials were investigating the disappearance of Ms. Corinne Harless from her Tuscaloosa home. Ms. Harless's automobile a 1985 model Mercury Cougar, was also missing from the residence. Police located Ms. Harless's vehicle at a Jack's restaurant in Tuscaloosa, and, when the police located it, Caldwell, and a man were in possession of it. Caldwell was arrested. Corporal M. A. Flowers of the Tuscaloosa Police Department proceeded to the scene of the arrest, and upon arrival, advised Caldwell of her rights; she orally waived them. Corporal Flowers placed Caldwell in his patrol car and proceeded to

police headquarters. While they were in the patrol car, Corporal Flowers asked Caldwell some questions, and she volunteered information about where she and her boyfriend had stayed the previous night. She stated that she did not know the whereabouts of Ms. Harless.

Later, on the same day, Investigator John Steele read Caldwell her Miranda warnings and her waiver. The defendant indicated that she understood her rights and the waiver, and she signed the waiver. She gave a statement regarding the location of Ms. Harless's body. Eventually, the body was found in a location other than the one Caldwell had described. Following the search, Caldwell was taken back to police headquarters and questioned again. Another investigator, Alan Fondren, advised her of her rights and after she had waived the rights, she gave a videotaped statement. After she gave this statement, she was released.

On November 15, 1989, Caldwell was arrested pursuant to an arrest warrant. Again, she was advised of her rights and again she waived them.

She then gave a second videotaped statement to police.

On appeal, the State argues that the voluntariness of a statement for the purposes of the Fifth Amendment, does not depend on whether the defendant comprehends the statement of Miranda. The State contends further, that equating an understanding of Miranda warnings with voluntariness cannot be defended. This argument has no merit. In its order of January 14, 1992, the trial court plainly stated, "After a review of all the evidence, it is the opinion of this court that the defendant did not understand her Miranda rights and did not freely and voluntarily waive said rights." (R. 132.) While the trial court never stated that the voluntariness of a statement is dependent on comprehending the Miranda rights, this court has held previously: "Whether a confession or inculpatory statement was knowingly and voluntarily made is a question of law and a proper determination for the trial judge." Agee v. State, 465 So.2d 1196, 1200 (Ala.Crim.App.

1984). It is important that a waiver of Miranda rights be knowing and voluntary. Certainly, whether a defendant can comprehend her rights is an important factor to be considered in determining whether her waiver of these rights is voluntary.

The State contends that compliance with Miranda procedure renders a custodial statement admissible. Specifically, the State contends that the law enforcement officials involved in this case properly followed Miranda procedure and, thus, that the defendant's subsequent statements to police should be admissible. The State further argues that a policy that permits the courts to "go behind an arrestee's assertion of understanding of the Miranda warning and 'make sweeping inquiries into the state of mind of ...' the arrestee at the time of that assertion, to see if he or she really ... understood the warning" is improper. However, we determine that the law of this State dictates that trial courts have the very authority to do that which the State argues against. We find that mere

compliance with Miranda procedure does not necessarily render a custodial statement admissible.

The record indicates that the police gave thorough warnings and explained the waiver of Miranda rights to the defendant. In each situation and prior to each statement, the defendant waived her rights. The test to determine the admissibility of a confession is a two-part inquiry: (1) the court considers whether the Government or the State has complied with the Miranda procedure and (2) upon finding a compliance with Miranda procedure, the court then rules on whether the confession was voluntary. United States v. Sims, 719 F.2d 375, 378 (1983), cert. denied, 465 U.S. 1034 (1984).

> "Additionally, all confessions are presumed to be involuntary. It is the duty of the trial court to determine if the confession was voluntarily given based on all of the facts surrounding the giving of the confession. When there is a conflict in the evidence surrounding the taking of the confession, and there is sufficient evidence to support the trial court's finding, this court will not disturb the finding of the trial court on appeal, unless it appears contrary to

> the great weight of the evidence, or is manifestly wrong, or unjust. The trial judge need only be convinced from a preponderance of the evidence that the confession was knowingly and voluntarily made."

Koger v. State, 443 So.2d 1343, 13 45-1346 (Ala. Crim.App. 1983). See also Holloway v. State, 561 So.2d 1119, 1121-1123 (Ala.Crim.App. 1990); Stallworth v. State, 445 So.2d 998, 999 (Ala. Crim.App. 1984).

In this case, it is clear that proper Miranda warnings were given. Nevertheless, the trial court had the responsibility to determine the voluntariness of the confession. This case presents conflicting evidence as to whether the defendant was competent to understand his Miranda rights, and thus could voluntarily waive them. The testimony of the expert witnesses differed sharply. Based on the Grisso test, the defendant's expert, who actually interviewed her, concluded that she could not comprehend a Miranda warning.

The State's expert, who did not interview the defendant, determined that she was competent

to understand a Miranda warning and waive her rights.

The trial judge was able to observe the defendant's demeanor, and, as finder of fact, was in the best position to resolve the conflict in the evidence. Based upon the evidence presented at the suppression hearing, we find that the trial court's determination that the defendant was unable to comprehend his Miranda rights and thus incompetent to voluntarily waive these rights, is not "manifestly contrary to the great weight of the evidence." Ex parte Matthews, [Ms. 1901837, Feb. 7, 1992] ___ So.2d ___ (Ala. 1992). Therefore, we cannot reverse the trial court's order suppressing the statements.

The order of the trial court is affirmed.

AFFIRMED.

All the Judges concur.

ORDER DENYING REHEARING

COURT OF CRIMINAL APPEALS

STATE OF ALABAMA

JUDICIAL BUILDING, 445 DEXTER AVENUE

MONTGOMERY 36130

JOHN PATTERSON
Presiding Judge
WILLIAM M. BOWDEN, JR.
SAM TAYLOR
H. WARD McMILLIAN
MARK G. MONTIEL
Judges

Clerk's Office
(205) 242-4590

COURT OF CRIMINAL APPEALS NO. 91-590
(Tuscaloosa Circuit Court No. 89-1305)

STATE OF ALABAMA vs. Tracy Monique Caldwell
Appellant Appellee

Dear Sir or Madam:

You are hereby notified that on November 13, 1992, the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

Application for rehearing overruled. Rule 39(k) motion denied.

/s/LANE MANN
CLERK
COURT OF CRIMINAL APPEALS

Hon. Joseph G. L. Marston, III
Assistant Attorney General

Hon. James Smith
2820 7th Street
P.O. Box 283
Tuscaloosa,AL 35402

APPENDIX C

ORDER OF THE SUPREME COURT OF ALABAMA

DENYING THE WRIT OF CERTIORARI

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

February 5, 1993

1920253

Ex parte State of Alabama

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(Re: Tracy Monique Caldwell v. State)

(CCA 91-590 (Tuscaloosa CC 89-1305))

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

MADDOX, J. - Almon, Shores, Adams and Ingram, JJ., concur;

Houston and Steagall, JJ., dissent.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of th instrument(s) herewith set out as same appears o record in said Court.
Witness my hand this 5 day of Feb. 1993.
/s/Robert G. Esdale
Clerk, Supreme Court of Alabama

APPENDIX D

RELEVANT ALABAMA STATUTES

§13A-6-2. MURDER.

(a) A person commits the crime of murder if:

(1) With intent to cause the death of another person, he causes the death of that person or of another person; or

(2) Under circumstances manifesting extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to a person other than himself, and thereby causes the death of another person; or

(3) He commits or attempts to commit arson in the first degree, burglary in the first or second degree, escape in the first degree or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree or any other felony clearly dangerous to human life and, in the course of or in furtherance of the crime that he is committing or attempting to commit, or in immediate flight

therefrom, he, or another participant, if there be any, causes the death of any person.

(b) A person does not commit murder under subdivisions (a)(1) or (a)(2) of this section if he was moved to act by a sudden heat of passion caused by provocation recognized by law, and before there had been a reasonable time for the passion to cool and for reason to reassert itself. The burden of injecting the issue of killing under legal provocation is on the defendant, but this does not shift the burden of proof. This subsection does not apply to a prosecution for, or preclude a conviction of, manslaughter or other crime.

(c) Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravated circumstances, as provided by article 2 of chapter 5 of this title, is death or life imprisonment without parole, which punishment shall be determined and fixed as provided by article 2 of chapter 5 of this title or any amendments thereto.

§13A-6-43. KIDNAPPING IN THE FIRST DEGREE.

(a) A person commits the crime of kidnapping in the first degree if he abducts another person with intent to

(1) Hold him for ransom or reward; or

(2) Use him as a shield or hostage; or

(3) Accomplish or aid the commission of any felony or flight therefrom; or

(4) Inflict physical injury upon him, or to violate or abuse him sexually; or

(5) Terrorize him or a third person; or

(6) Interfere with the performance of any governmental or political function.

(b) A person does not commit the crime of kidnapping in the first degree if he voluntarily releases the victim alive, and not suffering from serious physical injury, in a safe place prior to apprehension. The burden of injecting the issue of voluntary safe release is on the defendant, but this does not shift the burden of proof. This subsection does not apply to a prosecution for or preclude a conviction of kidnapping in the second degree or any other crime.

(c) Kidnapping in the first degree is a Class A felony.

§13A-7-5. BURGLARY IN THE FIRST DEGREE.

(a) A person commits the crime of burglary in the first degree if he knowingly and unlawfully enters or remains unlawfully in a dwelling with intent to commit a crime therein, and, if, in effecting entry or while in dwelling or in immediate flight therefrom, he or another participant in the crime:

(1) Is armed with explosives or a deadly weapon; or

(2) Causes physical injury to any person who is not a participant in the crime; or

(3) Uses or threatens the immediate use of a dangerous instrument.

(b) Burglary in the first degree is a Class A felony.

§13A-8-41. ROBBERY IN THE FIRST DEGREE.

(a) A person commits the crime of robbery in the first degree if he violates section 13A-8-43 and he:

(1) Is armed with a deadly weapon or dangerous instrument; or

(2) Causes serious physical injury to another.

(b) Possession then and there of an article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon or dangerous instrument, or any verbal or other representation by the defendant that he is then and there so armed, is prima facie evidence under subsection (a) of this section that he was so armed.

(c) Robbery in the first degree is a Class A felony.

APPENDIX E

ALABAMA RULES OF CRIMINAL PROCEDURE

RULE 15.7 PRE-TRIAL APPEALS BY THE STATE

(a) GENERALLY. An appeal may be taken by the state in a felony case to the Court of Criminal Appeals from a pre-trial order of the circuit court (1) suppressing a confession or admission or other evidence, (2) dismissing an indictment, information, or complaint (or any part of an indictment, information, or complaint), or (3) quashing an arrest or search warrant. Such an appeal may be taken only if the district attorney certifies to the Court of Criminal Appeals that the appeal is not brought for the purpose of delay and that the order, if not reversed on appeal, will be fatal to the prosecution of the charge.

(b) NOTICE OF APPEAL; TIME FOR TAKING PRE-TRIAL APPEAL. The notice of appeal shall be filed both with the clerk of the circuit court and with the clerk of the Court of Criminal Appeals within seven (7) days after the order has been entered, but in any case before the

defendant has been placed in jeopardy under established rules of law. The notice of appeal shall specify the charge or charges as to which, and the defendant or defendants as to whom, the appeal is taken. In a case in which multiple offenses or multiple defendants have been joined for trial, such specification on appeal shall be jurisdictional.

(c) PREFERENCE. All appeals and petitions for writs of certiorari pursuant to this rule shall have preference in the appropriate appellate court and shall be diligently prosecuted.

(d) EFFECT ON TRIAL COURT PROCEEDINGS. The filing of a notice of appeal in the circuit court pursuant to this rule shall stay the proceedings in the circuit court as to any charge with respect to which, and any defendant against whom, the appeal is taken.

(e) BRIEFS AND ARGUMENTS ON APPEAL. Briefs and arguments in the Court of Criminal Appeals shall be in accordance with the Alabama Rules of Appellate Procedure, except that, with regard to

briefs and arguments, that court may make such exceptions to those rules as it deems necessary or desirable in a particular case.

(f) RECORD ON APPEAL. The record on appeal shall be filed with the Court of Criminal Appeals in accordance with the Alabama Rules of Appellate Procedure, except that that court may require the filing of such a different record and may impose such a different schedule as that court may deem necessary or desirable in a particular case.

(g) REHEARINGS AND CERTIORARI. When the Court of Criminal Appeals has rendered a judgment in a pre-trial appeal taken pursuant to this rule, a party may, within seven (7) days, apply to that court for a rehearing. Applications for rehearing shall be subject to the provisions of Rule 40, A.R.App.P., as amended, to accommodate pre-trial appeals pursuant to this rule. Either party, whether or not that party has applied for a rehearing, may, within seven (7) days of the judgment of the Court of Criminal Appeals, or within seven (7) days of that court's order overruling an application for rehearing, file in

the Supreme Court a petition for writ of certiorari to review any decision of the Court of Criminal Appeals rendered in a pre-trial appeal pursuant to this rule. Petitions for writs of certiorari shall be subject to the provisions of Rule 39, A.R.App.P., as amended to accommodate pre-trial appeals pursuant to this rule.

(h) EFFECT OF RULING IN PRE-TRIAL APPEALS. If the trial court's ruling is upheld following a pre-trial appeal taken pursuant to this rule, then that affirmance shall operate as a bar to any further prosecution of the defendant or defendants as to whom the appeal was taken for any crime involved in the charge or charges as to which the appeal was taken, unless the trial court shall find that the subsequent prosecution is primarily based upon significant new evidence not reasonably available to the state when the pre-trial appeal was taken.

APPENDIX F

DETAILED STATEMENT OF THE FACTS

I.

THE UNDISPUTED FACTS

It is undisputed that on November 10, 1989, and again on November 15, 1989, Caldwell was arrested. No issue was raised in the Trial Court about legality of these arrests. Incident to each arrest, Caldwell was asked, first about the disappearance of a Ms. Harless and later about the murder of Ms. Harless. Prior to each interview, Caldwell was read a detailed Miranda warning, and a detailed waiver of rights. In each instance she acknowledged understanding her rights and the waiver and voluntarily waived her rights, once verbally and on other occasions by signing the waiver. In no instance was she

subjected to any force, threats, or promises or give any reward or hope of reward.[1]

There was no claim in the Courts below by Caldwell that any of her waivers or statements were coerced by the police. The sole claim in the Trial Court (C.R.pp.83-84) and the sole basis for the suppression of Caldwell's statements, was her alleged inability to understand a Miranda warning (C.R.p.132)

On the morning of Friday, November 10, 1989, the Tuscaloosa Homicide Metro unit, made up of investigators for the Tuscaloosa Sheriff's office and the Tuscaloosa and Northport City Police Departments, were processing the crime scene at the home of a Ms. Corinne Harless. (C.R.3 and

---

[1]In the interest of brevity and clarity, these matters being undisputed, we will hereinafter simply say, to wit, "she was advised of her rights and voluntarily waived them." However, it should be understood that the record clearly shows that all of the incidents of a voluntary and intelligent waiver of rights were proven in detail as to each of Caldwell's statements.

Tr.24,34-35 and 84-85) Ms. Harless had disappeared from her home, leaving behind clear evidence of foul play. Also missing was Ms. Harless' automobile, a 1985 tan Mercury Cougar. (Tr.pp.8-10)

In the effort to find Ms. Harless, a BOLO ("Be On The Lookout") for her car had been issued. At 2:15 p.m, a call from an Investigator Patrick reported that Ms. Harless' vehicle had been located at the Jack's Restaurant at Thirty-second and Twenty-fifth Street in Tuscaloosa. A man and a woman were found occupying and operating the car. The woman was Caldwell. (Tr. pp. 8-11 and 22)

Corporal M. A. Flowers of the Tuscaloosa Police Department immediately proceeded to Jacks, where Caldwell had been arrested. Officer Latner, a female, patted Caldwell down for weapons. (Tr.pp.10-11)

Corporal Flowers advised Caldwell of her rights, and she voluntarily verbally waived them. Flowers did not notice any hearing defect on the part of Caldwell. (Tr.pp.11-14 and 31)

Flowers placed Caldwell in the front passenger seat of his vehicle; he did not recall her being handcuffed. (Tr.pp.12-13 and 32)

In route to the homicide division, Flowers asked Caldwell where she and her boyfriend, the other occupant of Ms. Harless' car, had obtained it. She replied that she and her boyfriend were staying at the Moon Winks motel[2] and that at 6:00 p.m. the previous evening, Donnie Gayle Holliday had come to the motel room driving Ms. Harless' car. According to Caldwell, Holliday's sweatpants were wet from the knees

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[2]Flowers knew that Ms. Harless' home, from which she had disappeared, was less than 100 yards from the Moon Winks Motel, across a ravine or through a few backyards. (Tr.p.16)

and down, and Holliday had been in possession of $160.00 he had not previously had. Caldwell related that at about 8:00 p.m, Holliday left the room and did not return until about an hour later. Caldwell said that she did not know where Ms. Harless was. (Tr.pp.14-16)

After receiving this information, Flowers advised his Captain about the motel. That call went out at 2:35 p.m. (Tr.17-18) Therefore, the entire incident which included Caldwell's first statement, from the time of her arrest until Flowers' call to his Captain, lasted 20 minutes. Flowers and Caldwell continued on to headquarters, a trip which took 5-7 minutes. (Tr.pp.19-20 and 29)

Flowers did not treat Caldwell differently from any other arrestee. (Tr.p.29)

When Investigator John Steele arrived at the homicide office in the early afternoon of November 10, I989, he found Caldwell waiting for him. He read her a standard Miranda warning and waiver. He asked her if she understood several uncommon words, such as "coerce" and, when she

indicated a lack of understanding, he explained them. Caldwell stated that she understood her rights and the waiver, indicated a desire to answer questions and signed the waiver. (Tr.pp.36-44 and 85-86)

At this point, the Investigators' primary interest was in finding Ms. Harless, who, as far as they knew, was still alive. (Tr.pp.47 and 53)

In her statement, Caldwell told the Investigators that she, her boyfriend, Zack Wedgeworth, and Donnie Holliday had driven to Ms. Harless' home, had put Ms. Harless' body in the trunk of her car, driven her to the river, and shoved her in. (Tr.pp.53-55)

Investigator Steel and Investigator Sergeant Alan Eugene Fondren, accompanied by Caldwell, went to the river in an effort to find Ms. Harless' body. However, they were unable to do so. While this search was in progress, some hunters found Ms. Harless' body. (Tr.pp.52-55 and 87-88 and 93)

It is significant that up to this point, Caldwell claimed that most of her information

came from having heard about events from Zack Wedgeworth and Donnie Holliday. (Tr.p.101)

After returning to headquarters, Investigator Fondren took a videotaped statement from Caldwell. Again, Caldwell was advised of her rights and voluntarily waived them. In his conversations with Caldwell, Fondren noticed no hearing or speech defects, although she was nervous. Fondren was experienced in working with retarded people. (Tr.pp.58-59,88-91,96-97, and 101-102)

The taped interview took a total of 30-40 minutes. At first, Caldwell answered the questions quickly. Later, when in Fondren's estimation she was telling the truth, her responses came more slowly. (Tr.pp.102-103)

Caldwell was treated no differently from any other arrestee. (Tr.p.102)

After the taped interview, Caldwell was allowed to talk to her boyfriend, and she was then released. Her release, however, was the result of a breakdown in communication among the investigators. (Tr.pp.59 and 103-106)

At 12:00 noon, November 15, 1989, Caldwell was arrested pursuant to a warrant. She was again advised of her rights and voluntarily waived them. She then gave the Investigators a second videotaped statement. (Tr.pp.61-65)

It was undisputed that Caldwell is an educable retarded person with an I.Q. of 71 and that she had completed the eleventh grade. (R.p.57 and Tr.pp.70,132, and 158-159)

However, it was also undisputed that, on June 7, 1990, six months after her statements to the police, the Department of Mental Health And Mental Retardation found that Caldwell was competent to consult with her attorney (R.pp.58-59 and 62) and to stand trial. (R.pp.55-62)

II.

THE CONFLICTING EVIDENCE

The conflicting evidence came from two experts, one presented on behalf of Caldwell and one on behalf of the State. They were both

highly qualified in different but related fields. They each examined some of the same evidence (e.g. Caldwell's school records) and some different evidence. For example, Caldwell's expert actually interviewed her but did not review the video tapes of Caldwell's November 10 and November 15, 1989, statements. While the State's expert did not actually interview Caldwell,[3] he did review the tapes and the records of the Defense expert's interview, and he did examine the video taped statements. There is, of course, no issue of the honesty of these experts. Yet, they reached opposite conclusions as to the Caldwell's ability to understand a Miranda warning.

Dr. Anne Williams Bishop is trained in special education for retarded people. She wrote

---

[3]The State moved for an evaluation of the Appellee by its expert, Dr. Joe Wheeler Dixon. (R. P. 121) However, the Defense objected. (Tr. p. 346) The motion was withdrawn due to the ambiguity of the law. (R. p. 126)

her doctoral dissertation on the comprehension of Miranda rights by retarded people. (Tr.pp. 110-117)

On February 1, 1991, a year and two months after Caldwell's statements to the police, Dr. Bishop gave Caldwell a Grisso test, which is designed to determine a person's ability to understand a Miranda warning. It took this highly trained expert slightly over an hour to test Caldwell. Caldwell scored 15 out of 32 on the comprehension of Miranda test and 21 out of 30 on the Function Of Rights In Interrogation Test. As the result of this test, Dr. Bishop produced a eight page report (R.pp.86-93) and a fifteen page transcript, leading to the conclusion that Caldwell could not comprehend the concepts of Miranda. (R.pp.86-109 and Tr.pp.117-134)

Dr. Bishop testified that it was possible for a person to malinger or fake on the Grisso Test. (Tr.pp.30 and 31) Although she did not think that Caldwell was malingering. Dr. Bishop

had never observed a test subject that she thought was malingering. (Tr.p.152)

Dr. Joe Wheeler Dixon is a clinical psychologist. Like Dr. Bishop, Dr. Dixon is trained to test people for their ability to comprehend Miranda (Tr.pp.268-70)

Dr. Dixon is personally acquainted with Dr. Thomas Grisso, who developed the Grisso Test, and is familiar with Dr. Grisso's work. (Tr.pp.273-274)

One of the weaknesses of the Grisso Test is that there is no way to rule out malingering. Another problem with the test is that it is academic, i.e. it tests the subject's abstract knowledge of the constitutional principles, rather than their practical understanding of how these principles affect them. In addition, the Grisso Test makes the simple Miranda warning appear to be very complex. (Tr.pp.277 and 285-288)

Dr. Dixon criticized Dr. Bishop's methodology. In addition, he pointed out that when the test Dr. Bishop administered moved away

from academics, Caldwell's understanding was correct. (Tr.pp.288-292)

Dr. Dixon reviewed the video tapes of Caldwell's November 10 and November 15, 1989, statements. He considered these to be important evidence on the issue of Caldwell's comprehension of Miranda, since the longer a person is "in the system", the "wiser" they become. Dr. Dixon judged from these that Caldwell's understood her rights. (R.pp.279-285)

Dr. Dixon concluded that Caldwell was competent to understand a Miranda warning and to waive her rights. He testified that Caldwell was as competent as the average person with respect to the practical application of Miranda. (Tr.pp.295-296 and 316)

III

SUMMARY STATEMENT OF THE CONFLICTING EVIDENCE

The following statement from Caldwell's Statement of the Facts in her brief in the Court of Criminal Appeals of Alabama, provides an

excellent summary of the conflicting evidence, and in its Reply Brief the State adopted it:

> "...Dr. Bishop testified that the Defendant, Tracy Caldwell was unable to adequately comprehend the concepts contained in the "Miranda Warnings". (TR. 143--150). Dr. Dixon, who testified by way of Deposition and who had never interviewed the Defendant, (TR. 279), testified that Tracy Caldwell was competent to knowingly and intelligently waive her rights. (TR. 295). It is this dispute between the experts upon which the trial court issued its ruling and made a finding that 'the defendant could not understand her Miranda Rights and did not freely and voluntarily waive said rights'. (R.132)...." (Appellee's Brief, pages 1-2)

RESPONSE REQUESTED

ORIGINAL

Supreme Court, U.S.
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NO. 92-1678

IN THE SUPREME COURT OF THE

UNITED STATES

STATE OF ALABAMA,

PETITIONER

VS.

TRACY MONIQUE CALDWELL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

RESPONSE OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF FACTS

For purposes of this Response to Petition for Writ of Certiorari, Respondent adopts the Statement of the Facts as set out in the Petition for Writ of Certiorari. Respondent, however, reserves the right to expand the facts and restate the facts of the case if a brief on the merits is required to be submitted.

SUMMARY OF THE ARGUMENT

This case does not present an issue for which a Writ of Certiorari should be granted. The decision of the Alabama Courts is supported by provisions of the Alabama State Constitution and on separate State law grounds. Further, the decision of the Alabama Courts is consistent with this Court's recent rulings and with the recent holdings of the Eleventh Circuit Court of Appeals. There are no conflicts with the controlling decisions of this Court as alleged by the State. This case does not present questions which should be addressed by this Court.

ARGUMENT

I. THE ALABAMA COURT'S DECISION IS SUPPORTED BY STATE LAW AND THE ALABAMA STATE CONSTITUTION AND THEREFORE, NO FEDERAL CONSTITUTIONAL QUESTION NEED BE ADDRESSED.

The State of Alabama has it's own constitutional provisions on prohibition against self incrimination and right to counsel. It also has it's own requirement of due process.

> Rights of persons in criminal prosecutions generally; self incrimination; due process of law; right to speedy, public trial; change of venue.
>
> That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he elects to do so; and in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled t give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law; but the legislature may, by general law, provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and such change of venue, on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor, provided that at the time of the application for the change of venue, the defendant is imprisoned in jail or some other legal place of confinement.

Article I, Section 6, CONSTITUTION OF ALABAMA OF 1901

Obviously, a State can grant greater protections and rights to it's citizens than those granted by the federal

been carried over from cases arising even before Alabama's current Constitution. Brister v. State, 26 Ala. 107 (1855).

Further, the inquiry into the mental abilities of the arrestee was determined, under state law, to be a proper consideration in determining the voluntariness of a statement. Hines v. State, 384 So.2d 1171 (Ala.Crim.App.), cert denied, 384 So.2d 1184 (Ala. 1980). In Hines, the Alabama Court of Criminal Appeals held that any suspect of a crime is guaranteed the right to assistance of counsel and the right to remain silent during in-custody police interrogation not only under the United States Constitution, but also under the Alabama State Constitution. Hines is a very similar case to this one in that the defendant was mentally retarded. The Alabama Court determined that "the most important and controlling factor to be considered in the totality of the circumstances is the defendant's mental deficiency." Hines, supra, at 1181.

It is most interesting to note that the Alabama Court of Criminal Appeals bases it's opinion primarily on Alabama case law precedent. Only one federal case, that of United State v. Sims, 719 F.2d 375 (11th Cir. 1983), cert. denied, 465 U.S. 1034 (1984) is cited in the State Court 's opinion. This decision was made based on Alabama Constitutional and decisional law.

II. THE DECISION BY THE ALABAMA STATE COURTS IN THIS CASE IS CONSISTENT WITH THE RECENT CONTROLLING DECISIONS OF THIS COURT.

This Court has held that the inquiry into the admissibility of a statement alleged to have been given in a situation requiring the Miranda warnings is a two-part inquiry.

> The inquiry has two distinct dimensions. (Citations Omitted) First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free ad deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension by a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (1986).

This analysis is, of course, similar to that required under Alabama law. The State argues that only the first part of this test need ever be applied and that if Miranda is given and the arrestee gives some indication that he or she wants to talk anyway, then the statement subsequently given by the arrestee is admissible. The second part of the test announced and followed by this Court is totally ignored in the State's argument.

Of course, the underlying principles of the Miranda decision include the reality that custodial interrogation is, by it's very nature, coercive. This is the reason that

this Court has required certain, definite and specific warnings to be given to an arrestee before questioning. This Court recently cited with favor its earlier holding that "coercion may be mental as well as physical". Arizona v. Fulminante, 111 S.Ct. 1246 (1991), citing Blackburn v. Alabama, 361 U.S. 199, 204 (1960).

This Court also recently reaffirmed that the "totality of the circumstances" surrounding a confession must be examined to determine the voluntariness of the confession. Arizona v. Fulminante, supra. This is precisely the test used by the Alabama Court of Criminal Appeals in this case.

The Alabama Courts determined that the trial court made a finding of fact based upon the observation of the Defendant, the conflicting testimony of experts and all the circumstances surrounding the statements given by Ms. Caldwell. The State concedes here, as it did in the State courts below, that the finding of fact that Ms. Caldwell did not understand her Miranda rights is a valid decision delegated to the trial court. State's Petition for Certiorari, page 17.

The mental capacity of an accused has always been recognized by this Court as a valid consideration in determining the voluntariness of a statement. Blackburn v. Alabama, 361 U.S. 199 (1960); Fikes v. Alabama, 352 U.S. 191 (1957). The Eleventh Circuit Court of Appeals has held that expert testimony should be admissible under Rule 702 of the

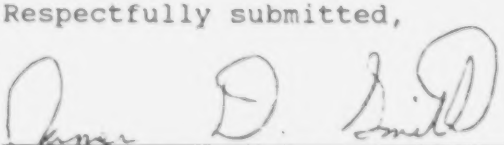
Federal Rules of Evidence to explain how mental deficiency may effect the susceptibility of an accused to confess to a crime. United States v. Roark, 753 F.2d 991 (11th Cir. 1985). The procedure to be followed by the federal courts in determining the admissibility of a statement also requires an inquiry into many factors, including whether Miranda warnings were given. 18 U.S.C. Section 3501.

The mental incapacity of Ms. Caldwell was found, in this case, to prevent her from understanding the Miranda warnings. The trial court merely took the next logical step and ruled that she could not "knowingly and intelligently" waive what she could not understand. The result was that the presumption of the involuntariness of the confession was not overcome by the State. This logical and obvious chain of reasoning does not conflict with this Court's controlling decisions. On the contrary, the trial court's decision is consistent with the law as decided by this Court.

CONCLUSION

While there are many additional issues to be addressed should this Court decide to grant the State of Alabama's Petition for Writ of Certiorari, those issues need not be reached at this point. The Writ should be denied since this case does not present significant federal Constitutional questions. The decisions of the Alabama courts below are consistent with both the Constitution and the case law of the State of Alabama. The decisions below are also consistent with the recent controlling decisions of this Court. Therefore, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that I have this day served the State of Alabama Attorney General's Office and the Tuscaloosa County District Attorney's Office in the foregoing matter by depositing in the United States mail a copy of the same properly addressed and with adequate postage affixed thereto.

This 8th day of July, 1993.

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July 8, 1993

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Hon. William K. Suter, Clerk
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Supreme Court Building
1 First Street N. E.
Washington, DC 20543

RE: 92-1678
Alabama v. Caldwell, Tracy

Dear Mr. Suter:

Enclosed is an original and one copy of a Motion to Proceed on Appeal in Forma Pauperis, Affadavit of my client, and a brief in response to the State of Alabama Petition for Write of Certiorari. Upon the information obtained from your office, I have followed Rule 39 as my client is indigent and I was appointed to represent her through the Circuit Court of Tuscaloosa County, Alabama.

Should I have made errors in following the procedures of Rule 39, I ask that I be contacted. This is my first opportunity to respond to the Supreme Court and I hope to be as accurate as possible.

Thank you very much for the help your office has provided in preparing this material.

Sincerely,

James D. Smith

JDS/cs

Supreme Court, U.S.
FILED
JUL 30 1993
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(4)

NO. 92-1678

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA, PETITIONER,

V.

TRACY MONIQUE CALDWELL, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITIONER'S REPLY TO THE OPPOSITION BRIEF OF RESPONDENT

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NO. 92-1678

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA,

PETITIONER,

V.

TRACY MONIQUE CALDWELL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITIONER'S REPLY TO THE OPPOSITION BRIEF OF RESPONDENT

SUMMARY OF THE REPLY ARGUMENT

1. From the first time the Respondent advanced the claim at issue here in the trial court, it was

presented as being under Miranda v. Arizona, (384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 [1966]), a case by this Honorable Court construing the United States Constitution. Miranda was cited and relied on by the state courts. The issue decided by the state courts and presented by the petition is an issue of U.S. Constitutional Law.

2. The finding of fact by the Trial Judge is incorporated into the questions presented by the petition. At issue in the instant case is the application of the law to such fact and that is an issue of law.

3. The language quoted by the Respondent from Arizona v. Fulminante, (499 U.S.___, 113 L.Ed.2d 302, 316, 111 S.Ct. 1246 [1991]), relating to mental

coercion is irrelevant to this case, in which there has never been even a suggestion of police coercion of any sort.

4. The Respondent is correct in asserting that many lower courts assume the correctness of the notion adopted by the Alabama Courts in this case. Since this notion undermines the purposes of the Miranda rule, we are asking this Court to review it in this case.

REPLY ARGUMENT

I.

STATE LAW GROUNDS?

The issue in this case first arose in the Circuit Court of Tuscaloosa County, Alabama, as a result of a motion to suppress. See pages 6-7 of the petition. The key ground of that motion read:

> "...5. The Defendant, Tracy M. Caldwell did not understand or perceive her Miranda Rights as read to her by Tuscaloosa County Police Officers and therefore could not have given the statements knowingly and voluntarily ..." (R. pp. 83-84; petition page 7; emphasis supplied.)

Thus from the outset, the Respondent's claim was based squarely on this Honorable Court's opinion in Miranda v.

Arizona, (384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct.1602 [1966]).

From the beginning the issue was whether failure to understand a Miranda warning alone rendered a statement involuntary within the meaning of the United States Constitution. This was the issue developed by the evidence. The State proved that the Petitioner had been subjected to no police coercion and had been advised of her rights, had expressly acknowledged understanding them and had freely and expressly waived them, four times. The Defense took no issue with this evidence but sought to cancel it by proving that not withstanding her assertions to the police, Caldwell did

not understands the concepts of Miranda. Finding that Caldwell did not understand the concepts of Miranda and accepting the Defense theory equating not understanding Miranda concepts with involuntariness, the Trial Court suppressed the Respondent's statements. The Trial Court's three sentence order mentions Miranda twice. See Appendix A to the petition. The Court of Criminal Appeals of Alabama affirmed the Trial Court's understanding of Miranda v. Arizona and its opinion and order. The Court of Criminal Appeals' opinion mentions Miranda twenty-two times. State v. Caldwell, 611 So.2d 1149 (Ala.Cr.App, 1992); Appendix B to the petition. Obviously, this case was decided by the

state courts under Miranda v. Arizona, a decision of the Supreme Court of the United States construing the Constitution of the United States. Yet, the Respondent claims that this case was decided under Alabama law.

Of course, Miranda v. Arizona, along with the great body of U.S. Constitutional Law, is the law of Alabama. Article VI of the United States Constitution provides, in pertinent part:

> "...This Constitution and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

However, the question of the correctness of the interpretation and

application of the Constitution is not a state law question.

II.

THE ISSUES IN THIS CASE ARE OF LAW NOT FACT

Respondent Caldwell seems to argue that the voluntariness issue is purely one of fact and, therefore, since the Trial Judge found the Respondent's statements involuntary, that closes the matter. If such an argument had any validity Colorado v. Connelly, (479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 [1986]), would never have reached this Court. The state trial court found as a fact that Connelly's statements were involuntary due solely to his mental condition. However, this Court ruled that a compulsion to confess which arises from a person's mental condition, which is not the result of

police action, does not produce a confession which is involuntary within the meaning of the Fifth Amendment. "...'[T]he ultimate issue of "voluntariness" is a legal question requiring federal determination'..." Arizona v. Fulminante, 499 U.S.___, 113 L.Ed.2d 302, 316, 111 S.Ct. 1246 (1991)

In this case, the Trial Court found as a matter of fact that Respondent Caldwell could not understand the Miranda warnings she received due solely to her mental condition, her assertions to the police that she did understand not withstanding. This finding of fact is incorporated in the questions presented by the instant petition. See also note 5 at page 9 of the petition. The

issues presented by the petition relate, not to the facts found by the Trial Judge, but to the legal conclusion His Honor reached based on those findings. These issues are of law not fact.

III.

CONFLICT WITH THE CONTROLLING DECISIONS OF THIS HONORABLE COURT

Quoting from Arizona v. Fulminante, (499 U.S.___, 113 L.Ed.2d 302, 316, 111 S.Ct. 1246 [1991]), the Respondent correctly points out that coercion can be mental, as well as physical. Therefore, concludes the Respondent, the decisions and opinions of the Alabama Courts in this case are consistent with this Court's rulings. However, in this case there has never been a claim or any evidence of any coercion, mental or physical. There is no basis for even a suggestion of any sort of coercion by the police in this case.

On the other hand, the Respondent makes no effort to reconcile the State

Courts' identifying a lack of understanding of a Miranda warning with involuntariness, with the many holdings of this Honorable Court finding voluntariness without Miranda compliance. See pages 23-25 of the petition.

IV.

LOWER COURT DECISIONS

The Respondent argues that the decisions of the State Courts in this case are consistent with certain lower court opinions.

It is, of course, true that just as many courts once assumed that compulsion to confess resulting from a mental defect was involuntariness for Fifth Amendment purposes, a notion rejected by this Court in Colorado v. Connelly, (479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 [1986]), many courts assume that mental deficiency defeats Miranda compliance, notwithstanding police efforts. This latter notion completely undermines the "...concrete

constitutional guidelines for law enforcement...", (Miranda v. Arizona, 384 U.S. 436, 441-442, 16 L.Ed.2d 694, 705, 86 S.Ct. 1602 [1966]), which Miranda was intended to establish. It also defeats the clarity and specificity of the Miranda rule. See the language quoted from Berkemer v. McCarty, 468 U.S. 420, 430, 82 L.Ed.2d 317, 328, 104 S.Ct. 3138 (1984) and Fare v. Michael C., 442 U.S. 707, 718, 61 L.Ed.2d 197, 208, 99 S.Ct. 2560 (1979) at pages 28 and 29 of the petition. If this notion is valid, no matter how the police act toward an arrestee, no matter what warnings they give, no matter how often they repeat the warnings, no matter how many times the arrestee asserts understanding, and

no matter how many waivers are executed, a constitutional violation is still possible.

The purpose of the instant petition is to present this widely held notion for the review of this Honorable Court.

CONCLUSION

In conclusion your Petitioner, the State of Alabama, again respectfully submits that in this case the Court of Criminal Appeals and the Supreme Court of Alabama, ruled contrary to the decisions of this Honorable Court and erroneously resolved an important question not previously addressed by this Honorable Court.

Therefore, Your Petitioner again prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of and reverse the decisions of the said appellate courts of Alabama.

Respectfully submitted,

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